IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6540 OF 2007

Messrs Mervyn Shelley & Co. : Petitioner/
Orig.Deft. no.1

V/s.

M/s.Kishinchand Chellaram & Anr. : Respondents

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Mr.A.K.Abhyankar i/b. Mr.N.V.Mhatre for the petitioner.

Mr.V.A.Thorat with Mrs.S. Baig for respondent no.1.

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CORAM : S.A.BOBDE, J.

DATE : SEPTEMBER 13, 2007.

P.C.

1. The petitioner challenges the grant of an amendment by which certain facts have been allowed to be introduced by the respondents in the plaint.

2. The suit is one filed under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 by the respondent. One of the grounds for eviction is that the tenant has caused damage to the premises. While the suit was pending, the new Rent Control Legislation, viz., the Maharashtra Rent Control Act, 1999 has been enacted. The new Act appears to take a different view of alterations and damages which are allegedly caused by a tenant. After

coming into force of the new Act, the respondent-landlord applied for amendment stating that on 4.4.2005 (after coming into force of the new Act), an inspection was made and the petitioner-tenant was found to have made certain alterations and thereby damaged the premises. This amendment has been allowed.

3. It is urged by Mr.Abhyankar, the learned counsel for the petitioner, that grant of the amendment is contrary to law and will ip so facto have the effect of converting the suit into a suit for trial under the Maharashtra Rent Control Act, 1999 since the amendment pertains to a fact which came into force on 4.4.2005. This contention is not based on a correct perception of the amendment allowed by the Court. By the amendment, the Court has allowed the respondent to plead that an inspection was conducted on 4.4.2005 when certain alterations were noticed. Indeed, this is not the same thing as saying that those alterations are made on 4.4.2005. The alterations may well have been made prior to the coming into force of the new Act. When the alterations were made is a matter which would be ascertainable after the evidence is led in the suit. In the circumstances, there is nothing illegal in the grant of an amendment which allows certain facts to be pleaded. The introduction of facts cannot affect in such cases the law under which the suit is to be tried. In the

present case, the suit will be tried according to the applicability of the repeal and saving clause incorporated in section 58 of the Maharashtra Rent Control Act, 1999. The said section 58 reads as follows:-

> "58. (1) On the commencement of this Act, the following laws, that is to say,--
>
> (a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;
>
> (b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and
>
> (c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954,
>
> shall stand repealed.
>
> (2) Notwithstanding such repeal,--
>
> (a) all applications, suits and other proceedings under the said Acts, pending on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority, shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;
>
> (b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;
>
> (c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is

> superseded or modified by any appointment, rule or notification made or issued under this Act;
>
> (d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law."

This will depend upon the facts found. Thus, there is no reason to interfere with the order granting amendment. However, all questions pertaining to the law under which the suit will be tried are left open for final decision in the suit.

4. There is no reason to entertain this Writ Petition which is hereby dismissed.

S.A. BOBDE, J.